

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1446

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

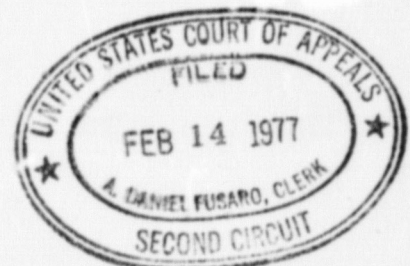
-----X  
:  
:  
UNITED STATES OF AMERICA, :  
:  
Plaintiff-Appellee, :  
:  
-against- :  
:  
ROMULO G. VELLANTI, :  
:  
Defendant-Appellant. :  
:  
-----X

*B/s*  
Docket No. 76-1446

=====

APPENDIX

=====



ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
ROMULO G. VELLANTI  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN,  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



ARGES 26:7201 Income tax evasion  
26:7206(1) False statements on Income tax return  
CLOSED  
John Caden  
M.Asen, Legal Aid  
26 Court St., Bklyn, NY 701  
522-3494

ARREST 10/22/75 U.S. Custody Began on Above Charges  
INDICTMENT 11/25/75 Information ☐ High Risk Date Design'd ☐ Waived ☒ Superseding Indict/Info 6/4/76  
ARRAIGNMENT 12-4-75 1st Plea " Final Plea  
TRIAL Trial Set For ☒ Not Guilty ☐ Nolo ☐ Guilty ☐ Not Guilty ☐ Nolo ☐ Guilty  
Vair Dire ☐  
Disposition 10/1/76  
10/22/76 Trial Began  
6/28/76 Trial Ended

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		
Arrest Warrant	Served	10-22-75	MS 070B	<input checked="" type="checkbox"/> Waived <input type="checkbox"/> Not Waived		<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input checked="" type="checkbox"/> Held to Answer to U. S. District Court
COMPLAINT		20-22-75	MS 070B	Tape No.	INITIAL/No.	AT: EDNY. Magistrate's Initials YAC/070A
OFFENSE (In Complaint)	T. 26 USC §7201 - Attempt to evade and defeat the income tax due and owing by him to the USA					

*Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Delay			
DATE		PROCEEDINGS		(a)	(b)
10/22/75	Arraignment. AUSA - John Caden D.C. LAS assigned.				
11/25/75	BEFORE COSTANTINO, J. - INDICTMENT FILED				
12-4-75	Before BARTELS J - case called - deft & atty M.Asen of Legal Aid present - Maria Elena Cardenas sworn as interpreter - deft waives reading of the indictment and enters a plea of not guilty - deft waives speedy trial rights - trial set down for March 29, 1976 - bail contd.				
12-4-75	Notice of Appearance filed.				
3-29-76	Before BARTELS, J - case called - deft & counsel present - trial adjd to June 22, 1976.				
4-15-76	Notice of Readiness for Trial filed				
6-21-76	Before NEAHER, J - SUPERSEDING INDICTMENT FILED (S)				
6-22-76	Before BARTELS, J - case called - deft & counsel present - trial ordered and begun - Jurors selected and sworn - trial contd to June 23, 1976.				
6-23-76	Before BARTELS, J. - Case called. Deft & counsel present. Trial resumed. Trial continued to 6-24-76 at 10 A.M.				
6-24-76	Before BARTELS, J - case called - deft & counsel present - trial resumed - trial contd to 6-25-76.				
6-25-76	Before BARTELS, J - case called - deft & counsel present - trial resumed - trial contd to June 28, 1976				

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
6-28-76	Before BARTELS, J - case called - deft & counsel M. Asen present - trial resumed - defts motion for judgment of acquittal is denied - Jury retires to deliberate at 4:15 PM Jury returns with a verdict of guilty as to counts 1 to 6 incl., Jury polled and jury discharged - sentence adjd without date - trial concluded - motion to set aside verdict is denied - Bail contd.				
10/1/76	Before BARTELS, J. - Case called. Deft & Counsel present. Deft sentenced for a period of 2 yrs on each of cts 1-6 & pursuant to T-18, U.S.C. Sec. 3651 the deft shall be confined for a period of 30 days. Execution of the remainder of sentence is suspended and the defendant is placed on probation for a period of 3 years, the probation period to commence at the end of the prison term. Special condition of probation is that deft pay his tax liabilities and penalties during the period of supervision. Said sentence to run concurrently with each other for a total of 30 days imprisonment and 3 years probation. Deft advised of his right to appeal. On motion of AUSA Caden the underlying indictment is dismissed. Execution of sentence stayed to 12/1/76 pending appeal.				
10/1/76	Judgment & Order of Probation filed. Certified copies to Probation and Marshals.				
10/1/76	Notice of Appeal filed.				
10/1/76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.				
10-18-76	Order Received from Court of Appeal that record be docketed on or before 11-5-76.				
<del>10-22-76</del>	<del>Order received from Court of Appeals filed that record be docketed on or before 11-5-76</del>				
10-22-76	Order filed received from the court of appeals that a copy of the transcript of testimony shall be filed with the Clerk of the District court on or before Nov. 15, 1976				
11-3-76	Stenographer's Transcript dated October 1, 1976 - filed.				

11/15/76

*Rec. Asen*

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W. C.  
cl  
te  
J  
Y. A.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

75 CR 900

UNITED STATES OF AMERICA

INDICTMENT

- against -

Cr. No. \_\_\_\_\_

ROMULO G. VELLANTI,

(T. 26, U.S.C. §7201,  
§7206(1))

Defendant.

S. DISTRICT COURT, N.Y.

NOV 2 1975

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of April 1971, in the Eastern District of New York, the defendant ROMULO G. VELLANTI residing in Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1970 by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent income tax return on behalf of himself which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of \$6,695, and that the amount of tax due and owing thereon was the sum of \$1,481, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$43,381.22, upon which said taxable income there was owing to the United States of America an income tax of \$19,096.89.

(Title 26, United States Code, Section 7201).

COUNT TWO

On or about the 15th day of April 1972, in the Eastern District of New York, the defendant ROMULO G. VELLANTI residing in Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent income tax return on behalf of himself which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of \$9,347 and that the amount of tax due and owing thereon was the sum of \$2,040, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$61,511.09 upon which said taxable income there was owing to the United States of America an income tax of \$27,357.

(Title 26, United States Code, Section 7201).

COUNT THREE

On or about the 15th day of April 1971, in the Eastern District of New York, the defendant ROMULO G. VELLANTI did wilfully and knowingly make and subscribe a 1970 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which 1970 Federal Income Tax return he did not believe to be true and correct as to every material matter in that the said 1970 Federal Income Tax return stated that his gross



receipts for the calendar year was the sum of \$20,035, whereas, as he then and there well knew and believed, his gross receipts for the said calendar year was the sum of \$100,615.

(Title 26, United States Code, Section 7206(1)).

COUNT FOUR

On or about the 15th day of April 1972, in the Eastern District of New York, the defendant ROMULO G. VELLANTI did wilfully and knowingly make and subscribe a 1971 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which 1971 Federal Income Tax return he did not believe to be true and correct as to every material matter in that the said 1971 Federal Income Tax return stated that his gross receipts for the calendar year was the sum of \$22,634, whereas, as he then and there well knew and believed, the gross receipts for the said calendar year was the sum of \$144,844.84.

(Title 26, United States Code, Section 7206(1)).

COUNT FIVE

On or about the 15th day of April 1973, in the Eastern District of New York, the defendant ROMULO G. VELLANTI did wilfully and knowingly make and subscribe a 1972 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service,

which 1972 Federal Income Tax return he did not believe to be true and correct as to every material matter in that the said 1972 Federal Income Tax return stated that his gross receipts for the calendar year was the sum of \$13,141, whereas, as he then and there well knew and believed, the gross receipts for the said calendar year was the sum of \$40,679.25.

(Title 26, United States Code, Section 7206(1)).

A TRUE BILL

Malcolm P. Epstein  
FOREMAN

David E. Krupp  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



TRP:JLC:ed  
F.#761,861

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
JUN 21 1976

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

ROMULO G. VELLANTI,

Defendant.

----- X

THE GRAND JURY CHARGES:

SUPERSEDING INDICTMENT

Cr. No. 75 CR 900(S)  
(Title 26, U.S.C., §7201  
and §7206(1))

COUNT ONE

On or about the 15th day of April 1971, in the Eastern District of New York, the defendant ROMULO G. VELLANTI residing in Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1970 by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be

mailed, in the Eastern District of New York, a false and fraudulent income tax return on behalf of himself which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of \$6,695, and that the amount of tax due and owing thereon was the sum of \$1,481, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$15,369.22, upon which said taxable income there was owing to the United States of America an income tax of \$4,082.57. (Title 26, United States Code, Section 7201).

COUNT TWO

On or about the 15th day of April 1972, in the Eastern District of New York, the defendant ROMULO G. VELLANTI residing in Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due

and owing by him to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and Fraudulent income tax return on behalf of himself which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of \$9,347, and that the amount of tax due and owing thereon was the sum of \$2,040, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$46,578.25, upon which said taxable income there was owing to the United States of America an income tax of \$17,416.95. (Title 26, United States Code, Section 7201).

COUNT THREE

On or about the 15th day of April 1973, in the Eastern District of New York, the defendant ROMULO G. VELLANTI residing in Brooklyn, New York, did wilfully and knowingly attempt



to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1972, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent income tax return on behalf of himself which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of \$6,438 and that the amount of tax due and owing thereon was the sum of \$1,252, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$51,877.18, upon which said taxable income there was owing to the United States of America an income tax of \$20,341.31. (Title 26, United States Code, Section 7201).

COUNT FOUR

On or about the 15th day of April 1971, in the Eastern District of New York, the defendant ROMULO G. VELLANTI

did wilfully and knowingly make and subscribe a 1970 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which 1970 Federal Income Tax return he did not believe to be true and correct as to every material matter in that the said 1970 Federal Income Tax return stated that his gross receipts for the calendar year was the sum of \$20,035, whereas, as he then and there well knew and believed, his gross receipts for the said calendar year was the sum of \$72,603. (Title 26, United States Code, Section 7206(1)).

COUNT FIVE

On or about the 15th day of April 1972, in the Eastern District of New York, the defendant ROMULO G. VELLANTI did wilfully and knowingly make and subscribe a 1971 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed

with the Internal Revenue Service, which 1971 Federal Income Tax return he did not believe to be true and correct as to every material matter in that the said 1971 Federal Income Tax return stated that his gross receipts for the calendar year was the sum of \$22,634, whereas, as he then and there we knew and believed, the gross receipts for the said calendar year was the sum of \$129,912. (Title 26, United States Code, Section 7206(1)).

COUNT SIX

On or about the 15th day of April 1973, in the Eastern District of New York, the defendant ROMULO G. VELLANTI did wilfully and knowingly make and subscribe a 1972 Federal Income Tax return which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which 1972 Federal Income



Tax return he did not believe to be true and correct as to every material matter in that the said 1972 Federal Income Tax return stated that his gross receipts for the calendar year was the sum of \$13,141, whereas, as he then and there well knew and believed, the gross receipts for the said calendar year was the sum of \$83,624.09. (Title 26, United States Code, Section 7206(1)).

A TRUE BILL

Catherine L. Lerner  
Deputy FOREMAN

David B. Vance  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

## Charge of the Court

THE COURT: Ladies and gentlemen, you have listened very attentively to the testimony and to the summation. The testimony presented the facts, through witnesses and exhibits. The summation presented the arguments of these attorneys pro and con concerning those facts.

And the time now has come for you and me to perform our respective functions in the trial of this case. You have been very patient in this case, which, frankly, involved figures, calculations, and wasn't the most exciting case you have heard, but you have been very attentive and you have heard the voices of the attorneys and you have heard my voice. Now the time has come for your voice to be heard and it will be heard.

At the outset, I wish to extend to each of you my appreciation for your attentiveness and alertness during the course of this trial and particularly to express my appreciation for the sacrifice which each and everyone of you must have made in neglecting your business and personal affairs to see that the ends of justice might be accomplished in this case.

You have been tolerant of the unavoidable delays and I notice that you have followed this case



## Charge of the Court

very closely inspite of the fact it did involve figures and calculations. Every criminal prosecution is important to the Government of the United States, but it's equally important to a defendant on trial. So, each is entitled to justice and equal justice at your hands.

From my experience, justice is best dispensed in a calm, patient and deliberate manner and I sincerely request that you carry that attitude through your deliberations when you go into the jury room. Of course, you must respect the viewpoints of your fellow jurors and of course, you must talk to each other with consideration, intelligence, patience and you decide the issues in this case on merit and on the merits alone.

As I said, you heard the evidence, you have heard the arguments of counsel here. Now, it becomes my duty to give you the law governing this case.

It's your duty to accept the law as given to you by the Court and to determine the facts of the case for yourself. It will be as I told you the proper application to the law of the case to the facts which you find those facts to be, which will determine your verdict.

## Charge of the Court

Again, I repeat that the full responsibility and sole power in determining facts are with you and anything I may say as indicating any view or any opinion as to those facts is to be completely ignored by you. And in determining the facts you should not be influenced by any rulings that the Court may have made during the trial. Those rulings dealt with matters of law with respect to introduction of evidence, but they didn't deal with questions of fact.

The Court's ruling on any objection made by either of these attorneys and any question which the Court may have posed to any witness are not to be considered by you as indicating either the guilt or innocence of that defendant. Or that the Court has any opinion with respect to the guilt or innocence of that defendant. The same is true with respect to any inflection of the Court's voice relative to any such matters or in connection with any comments or statements the Court has made to either of these attorneys.

The Court expresses no opinion as to the guilt or innocence of this defendant. The determination of such guilt or innocence is a matter that rests



## Charge of the Court

exclusively with you. So, you see you have a very, very important and serious task before you. With respect to which you should have the same sense as I told you before, of honor and integrity.

Now, there are some general principles of law which are of importance in every criminal case and therefore I wish first to make some statements with respect to criminal cases in general, after which I shall endeavor to make clear to you what this particular case involves. To some extent my general comments will represent a repetition of what I told you at the beginning.

It's an established principle that an indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and it does not create any presumption or permit any inference of guilt as against this defendant.

It's also a principle well recognized in law that every person who is charged with the commission of the crime is presumed to be innocent and the burden rests on the Government to prove to your satisfaction beyond a reasonable doubt, every element of a crime and that the party is guilty as charged. And this presumption of innocence remains with this

## Charge of the Court

defendant all through the case, until however it is overborne by proof which satisfies you beyond a reasonable doubt, that a presumption of innocence no longer remains with him.

The term reasonable doubt as used in this charge does not mean any possible doubt that you might have, but it means such a reasonable doubt as a careful, prudent and reasonable man or woman ought to entertain in the circumstances involved. It means a doubt based upon reason, which is reasonable in view of all of the evidence. And the keyword there is reasonable. A reasonable doubt may arise from the evidence produced, or from the lack of evidence in the case. It is the obligation of the Government to prove this defendant's guilt beyond a reasonable doubt. But, it's not required to prove this defendant's guilt beyond a shadow of a doubt. It's rarely possible to prove anything to an absolute certainty or beyond all possible doubt and seldom can one prove a controversial fact with mathematical certainty. A reasonable doubt does not mean a vague, whimsical or imaginary doubt; nor does it mean a possible doubt created by a reluctance on the part of the jury to perform an unpleasant task. It means a doubt arising out of the evidence, or lack



## Charge of the Court

of evidence.

What is a reasonable doubt: A reasonable doubt is a doubt which will cause prudent men to hesitate to act in matters of importance to themselves. It's very difficult to explain with any diagram what is a reasonable doubt. It's something that depends on the evidence or lack of evidence, and I have done the best I can to make it clear to you. Now, if after a fair and impartial consideration of all the evidence, or because there is a lack of evidence, you have a reasonable doubt as to this defendant's guilt on any particular count, or on every count, then it's your duty to acquit him.

On the other hand, if after fair and impartial consideration of all the evidence, you conclude that you have no doubt that is reasonable as to the defendant's guilt then it is your duty to convict him.

One is said to be convinced in a case of this kind beyond a reasonable doubt, when after impartial comparison and consideration of all the evidence, one can conscientiously say that he is convinced to a moral certainty of the truth of the charge.

I'll repeat: If there is a reasonable doubt

Charge of the Court

in your mind as to the defendant's guilt as to the charges in the indictment, he is entitled to the benefit of that reasonable doubt and therefore to an acquittal on the charges.

If, on the other hand, you feel that this defendant's guilt is clear beyond a reasonable doubt, then you must find him guilty as charged. Thus, you look at all the evidence introduced in this case, when you ask yourself whether you're satisfied beyond a reasonable doubt that the offenses have been committed as charged in the indictment.

If you are so satisfied, that is your plain duty, to convict the defendant. But if there exists in your mind a reasonable doubt of this defendant's guilt, then you must give this defendant the benefit of that doubt and acquit him.

If there are two reasonable conclusions equally supported by the evidence, one of which is consistent with the guilt of the defendant, the other which is consistent with his innocence, then you must come to a conclusion that is consistent with his innocence.

I was talking there about reasonable conclusion and if you adopt a conclusion, reasonable conclusion, as consistent with his innocence, then of course you must acquit him.



## Charge of the Court

The question of reasonable doubt is one which can be determined only by you. It cannot be determined by argument of counsel or the opinion of counsel in reaching a conclusion with respect to reasonable doubt. You must consider all of the evidence together. Not just a particular segment or portion of the evidence isolated from the rest of the evidence. The machinery of trial calls for the exercise of varying functions by counsel, by the witnesses who testify, by the Court that presides and by you the jury.

I repeat again and again that you the jury will exercise the fact-finding function. As you have been told, you are the sole judges of those facts, that is to say, it is you who must consider all the evidence, you weigh the evidence, you draw inferences from the evidence, but only from the evidence, and you must distinguish from the mere arguments of counsel which have been made before you, and the evidence, the actual evidence upon which those arguments rest. The repetition of an argument however often or loudly or dramatically it is made does not constitute evidence. You must carefully analyze the assertions which have been made to you by counsel for the defendant and counsel

## Charge of the Court

for the Government and you ascertain what basis those assertions have in the evidence.

That brings us directly to the indictment itself, which I have already read to you, but in order that you might have a clear understanding of the case I am going to read that indictment to you again.

And I will preface my reading by the remark that there are only three income tax returns involved here, but there are six counts. And there are two counts addressed to each income tax return.

One is evasion of tax itself, and the other is false return. So, let me read this indictment to you so you understand why you have six counts.

Count One says on or about the 15th day of April 1971, in the Eastern District of New York, the defendant Romulo Vellanti, residing in Brooklyn, New York, wilfully, knowingly, attempted to evade and defeat a large part of the income tax due and owing to the United States of America for the calendar year 1970. By preparing and causing to be prepared, by signing and causing to be signed and by mailing and causing to be mailed in the Eastern District of New York a false and fraudulent income



## Charge of the Court

1  
2 tax return on behalf of himself, which was filed  
3 with the Internal Revenue Service, wherein it was  
4 stated that his taxable income for the said calendar  
5 year was the sum of \$6,695, and that the amount of  
6 tax due according thereof was the sum of \$1,481,  
7 whereas he then and there well knew his taxable  
8 income for the said calendar year was the sum of \$15,692,  
9 upon which taxable income was due and owing to the  
10 United States of America an income tax of \$4,082.57,  
11 in violation of Title 23, U. S. Code Section 7201.

12 Now, the other two counts refer to years  
13 April '72 and seven -- no, '71 and '72.

14 I'll read them. It's the same thing except  
15 the amounts differ:

16 On or about the 15th day of April 1972, in  
17 the Eastern District of New York, the defendant  
18 Romulo Vellanti, residing in New York, did wilfully  
19 and knowingly attempt to evade and defeat a large  
20 part of the income tax due and owing to the United  
21 States of America for the calendar year of 1971, by  
22 preparing and causing to be prepared, and signing  
23 and causing to be signed and mailing and causing to  
24 be mailed in the Eastern District of New York a  
25 false and fraudulent income tax return which was

## Charge of the Court

1 filed with the Internal Revenue Service, wherein it  
2 was stated that his taxable income for the said  
3 calendar year was the sum of \$9,347, and that the  
4 amount of tax due and owing thereon was the sum of  
5 \$2,040.  
6

7 Whereas, as he then and there well knew  
8 that his taxable income for the said calendar year  
9 was the sum of \$46,573.25, upon which said taxable  
10 income was due and owing to the United States of  
11 America an income tax of \$17,416.95. Again, in  
12 violation of Title 28, United States Code, Section  
13 7201.

14 Count Three reads on or about the 15th day of  
15 April, 1973, in the Eastern District of New York, the  
16 defendant Romulo Vellanti, residing in Brooklyn, New  
17 York, did wilfully and knowingly attempt to evade  
18 and defeat a large part of the income tax due and  
19 owing by him to the United States of America for the  
20 calendar year 1972 by preparing and causing to be  
21 prepared, by signing and causing to be signed, and  
22 mailing and causing to be mailed in the Eastern District  
23 of New York, a false and fraudulent income tax return  
24 on behalf of himself, which was filed with the Internal  
25 Revenue Service, wherein it was stated that his taxable



income for said calendar year was the sum of \$6,438 and the amount of tax due and owing thereon was the sum of \$1,222.

Whereas he then and there knew his taxable income for the calendar year was the sum of \$51,877.01 upon which said taxable income was due and owing to the United States of America an income tax of \$20,341.31, in violation of Title 26, United States Code, Section 7201.

Now, we'll go to the other last three counts which do not charge an attempt to evade tax, but do charge knowingly filing a false and untrue income tax return. If you listen, you will hear the charge.

Count Four says on or about the 15th day -- and it goes back again to those years -- on or about the 15th day of April 1971, in the Eastern District of New York, the defendant Romulo Vellanti did wilfully and knowingly, did wilfully make and subscribe a 1970 Federal Income Tax Return which was verified by the written declaration that it was made under the penalty of perjury and filed with the Internal Revenue Service. Which 1970 Federal Income Tax Return he did not believe to be true and correct as to every material matter in that the said 1970 Federal Income

## Charge of the Court

1  
2 Tax Return stated that his gross receipts for the  
3 calendar year was the sum of \$20,035, whereas he then  
4 and there well knew and believed that his gross  
5 receipts of the said calendar year was a sum of  
6 \$72,603, in violation of Title 26, U. S. Code,  
7 Section 7206(1).

8 Count Five says on or about the 15th day of  
9 April 1972, in the Eastern District of New York,  
10 the defendant Romulo Vellanti, wilfully and know-  
11 ingly did make and subscribe a 1971 Federal Income  
12 Tax Return which was verified by the written  
13 declaration that it was made under the penalty of  
14 perjury and filed with the Internal Revenue Service,  
15 which 1971 Federal Income Tax Return he did not  
16 believe to be true and correct as to every material  
17 matter that the said 1971 Federal Income Tax Return  
18 stated, that his gross receipts for the calendar  
19 year was the sum of \$22,634, whereas he then and  
20 there knew and believed gross receipts for the said  
21 calendar year was the sum of \$129,912, in violation  
22 of Title 26, Section 7206(1).

23 Count Six, on or about the 15th day of  
24 April 1973, in the Eastern District of New York,  
25 the defendant Romulo Vellanti did wilfully and



## Charge of the Court

1  
2 knowingly make and subscribe a 1972 Federal Income  
3 Tax Return which was verified by written declaration  
4 that it was made under the penalties of perjury and  
5 filed with the Internal Revenue Service, which 1972  
6 Federal Income Tax Return he did not believe to be  
7 true and correct as to every material matter in  
8 that the said 1972 Federal Income Tax Return stated  
9 that his gross receipts for the calendar year was  
10 a sum of \$13,141, whereas, as he then and there  
11 well knew and believed the gross receipts for the  
12 said calendar year was the sum of \$82,624.09, in  
13 violation of Title 29, United States Code, Section  
14 7206(1).

15 You'll note that there are two different  
16 sections mentioned. Well, as I told you before,  
17 the indictment is not evidence, but it charges the  
18 defendant with violating income tax statutes for the  
19 year in connection with income tax returns filed  
20 by him for the years of 1970, '71, and '72. Now,  
21 as to each year the Government charged that the  
22 defendant violated the statute in two respects, that  
23 is why there are six counts in the indictment instead  
24 of three; however, you must look at each year separately  
25 and you must look at each count separately.

## Charge of the Court

Now, referring to the first three counts of the indictment alleging violation of 7201 Title 26, United States Code, the statute imposes upon every individual subject to its provisions, an income tax which is computed on the basis of taxable net income. The burden is therefore upon the Government to prove beyond a reasonable doubt as essential elements of the offense charged in the indictment. First, that the defendant derived a taxable net income from his business or occupation in the calendar year of 1970, '71, and '72. Each year to be considered separately and second, that there was a tax due and owing thereon, the payment of which the defendant wilfully and knowingly attempted to defeat and evade.

I shall elaborate upon these elements of that particular offense a little later. The term taxable income as used in the statute means gross income, minus the deduction allowed by the statute as indicated in the tax returns which were introduced into evidence before you.

Gross income means income from whatever source derived, including salary and wages and compensation for personal services, or received in a trade or a business, and taxable income means the gross income,



## Charge of the Court

minus certain deductions allowed by the statute, also referred to in the income tax returns introduced into evidence which in general fall into the category of necessary expenses of conducting business transactions and of producing the gross income in question. In computing a taxable income no deduction is permitted for personal living or family expenses.

Referring now to the fourth, fifth, and sixth counts of the indictment which covers the same calendar years 1970, '71, and '72, and alleging violation of 7206 of Title 26 of United States Code, the statute deals with false statements in an income tax return and not with tax evasion. It imposes upon each individual subject to its provisions and obligation, to sign an income tax return verified by a written declaration made under the penalty of perjury, which must be true and correct as to every material element.

It subjects the maker who knowingly and wilfully signs such a return, not believing the same to be true and correct as to every material element, to a certain penalty, and I shall elaborate upon the elements of that offense in a minute or two.

## Charge of the Court

The pertinent portion of Section 7201 of Title 26 of the United States Code, claimed to have been violated Counts One, Two, and Three of the superseding Indictment reads as follows:

It reads: Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this Title or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof shall be punished as provided in the statute.

Now, the elements of that offense as appears from the Section are: One, a substantial additional amount of Federal Income Tax was due and owing from the defendant for the calendar year in question, over and above the amount of tax which was declared, or disclosed in the defendant's income tax return for that year. Two, knowledge on the part of the defendant that some additional Federal Income Tax of a substantial amount was due and owing from him to the Government for the calendar year in question, over and above the amount of the tax which was declared or disclosed in his income tax return for the calendar year in question.

Now, it's sufficient if the Government establishes that the defendant's income was unreported



## Charge of the Court

by a substantial amount upon which there was due an additional tax, but it need not prove the precise amount by which the defendant understated his income.

Three, the defendant wilfully attempted in some manner to evade or defeat such additional tax with the specific intent in bad faith to defraud the Government of such additional tax .

Now, the burden is upon the Government to prove beyond a reasonable doubt each and every essential element of the crime charged as outlined above. And the failure to do so is fatal to the prosecution and entitles the defendant to a verdict of acquittal. The law never imposes upon a defendant in a criminal case the burden or the duty of calling any witnesses or producing any evidence. There must be a wilful and positive attempt to defeat and evade the tax accompanied by a criminal intent. For example, an intent to defraud, as distinguished from mere inadvertence or negligence in the discharge of the statutory obligation to make a true and correct return, and to pay the tax which is due the Government. The essence of the offense lies in the wilful misconduct of the accused, accompanied by a criminal intent or fraudulent motive. You were instructed that there is no offense

## Charge of the Court

as a violation of the statute, in the absence of a wilful attempt to defeat and evade the tax imposed by the statute.

A specific intent must be established by evidence other than simply the mere understatement of gross income or the mere understatement of gross expenses or disbursements in the various returns.

What I am saying is that alone is not sufficient, there must be something else. Now, it is obviously impossible to ascertain or to prove directly what a man knew or what the man intended. Why is this? Why, you cannot look into a person's mind and you cannot see what his intentions were or what he knew.

But a careful and intelligent consideration of all these facts and circumstances shown by the evidence in any given case as to a particular person, action or statement, enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing, or in not doing certain things and what was the state of his knowledge. Now, I must go to the 7206(1), which is the section allegedly violated in Counts Four, Five, and Six. The pertinent portion of Section 7206(1), Title 26 of the United States Code, claimed to have been violated in Counts Four, Five, and



## Charge of the Court

Six of the indictment, reads as follows: -- I am talking about the pertinent portion, I am not reading the whole statute. There is much of it which will not be pertinent to this particular case, but I am reading for you the pertinent portion.

It says any person who: One, wilfully makes and subscribes any return statement or other document which contains or is verified by a written declaration that is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter upon conviction thereof, shall be punished as provided in the statute.

Now, in dealing with Section 7206(1), it is important to remember the section deals with false statements and not with income tax evasion. Intent to evade taxes is not an element of a crime charged in those last three counts, rather the section is designed to insure that the Government is provided with accurate and complete information on returns and statements. For that reason I also instruct you that it's not an element of an offense that the Government actually relied upon any of the alleged false statements.

Now, what are the elements of the offense?



## Charge of the Court

The elements of the offense as appears from the section are as follows:

One, the income tax returns in question were signed by the defendant; two, the returns in question contain or were verified by a written declaration under penalty of perjury. Three, the defendant did not believe the returns to be true and correct as to every material element. Four, the defendant acted willingly and knowingly and intentionally at the time he made and signed the returns. The individual returns on Form 1040 for the calendar years in question are in evidence as Governments Exhibits 1, 2, and 3. You must find first of all that the defendant signed these returns and the second element is that each individual return for the calendar years in question must be: One, that it contains or is verified by a written declaration that it was under penalty or perjury. You must make this determination by looking at the return. Either it has such a statement in it, or it doesn't. Now, the third element is that the defendant, that is the person who signed the returns, believed that the return is not true and correct as to every material part, by true and correct, I mean conform to the

## Charge of the Court

standards required by the tax law, material matter in this case includes a substantial understatement of gross receipts, or expenses and disbursements, and also, of the taxable income. Now, what the defendant believed to be true or not true when he signed this return obviously again depends upon his state of mind. I repeat we have no way of looking into a man's mind other than by observing his conduct, the way he behaves and what he said or says. If the defendant, for instance, signed the return in good faith and really believed it was true, he has not committed a crime and should be acquitted. For, in such a case, even if the return is not really true and correct, and he is simply laboring under a mistake and therefore would not be signing a return which he himself believed was not true. So, you see, the key question on the return is what did the defendant himself believe as to whether or not the return was true or false. Now, in this case, the Government charges that the defendant understated his gross receipts by a large and substantial amount, although it's not in the indictment the Government also charged that he, the defendant, understated his expenses by a large and substantial amount.



## Charge of the Court

As to these terms, we're only concerned whether or not the defendant understated his gross receipts by large and substantial amounts. Now, in determining whether the signer believed the returns in question to be true and correct as to every material matter, you must determine if there is an understatement of a large and substantial amount of gross receipts and/or whether there was an understatement of a large and substantial amount of expenses. It is unnecessary to determine whether there was a substantial understatement of both gross receipts and expenses. It is sufficient if there was a substantial understatement of either. You determine, you must determine that fact and you must also determine whether that understatement was a significant understatement. If it was an insignificant one, wasn't substantial, that is another matter, then it would not be incorrect, or the matter would not be a material matter. Now, as I said before, while there was quite a bit of evidence as to the statement of a substantial understatement of the disbursements and expenses, that was not charged in the indictment. It was introduced by the Government, I think as evidence, that there was a substantial understatement of gross income in determining whether

## Charge of the Court

the returns were true or false. It's only necessary to find a substantial understatement as to the category of gross income.

So, you should compare the size of the alleged omitted receipts with other claimed receipts and with the total gross income which has been reported, then you also compare the sizes of the alleged omitted expenses with the actual expenses set forth in the income tax returns. You should also compare the reported net income in these returns for each year with what the net income would have been if all the gross receipts had been reported and if all the actual expenses had been reported.

The Government does not have to prove the exact amount of any understatement in either category, of gross receipts, but it must prove beyond a reasonable doubt that the understatement of the receipts or the understatement of the alleged omitted expenses was substantial. If the understatement was insubstantial in a particular case as to either or both particular items, so that indeed the net income was generally accurate, then you may consider whether or not such an understatement in question was a material understatement.



## Charge of the Court

If the understatement of the receipts or the understatement of the expenses is large and substantial so that the net income would vary greatly from the true net income, then the understatement in either or both items is a material matter.

Now, the Government here contends that its proof shows beyond a reasonable doubt, that this defendant as the maker of these returns knew that the returns intentionally understated the gross receipts for the years 1970, 1971, and 1972, and that the maker therefore, that is the defendant, did not believe that these returns were true and correct as to every material matter.

Now, if you find any of the evidence of the offense not supported by proof beyond a reasonable doubt, you must acquit the defendant and you cannot infer the existence of one element by proof of the others, so if you find as to Counts One, Two, and Three that the defendant filed his income tax returns with the specific intent to avoid the payment of income tax or to defraud the Government of income tax, or if you find as to Counts Four, Five and Six that the defendant signed his income tax returns under penalty of perjury and did not believe the

## Charge of the Court

returns to be true and correct as to every material matter, and he did so knowingly and wilfully, then you must find him guilty as charged in these counts.

But, each count must be considered separately and the Government must prove each element beyond a reasonable doubt. If you find, on the other hand, that the Government has failed to prove these elements of the offense, or that the defendant did not have the required knowledge and intent as to any specific count or you are unable to determine from the evidence whether his actions were in honest belief or whether he was acting under a mistaken fact, as to any particular count, or was ignorant of the truth or falsity of the charges in any particular count, you must find him not guilty as to that particular count.

You have the obligation and duty and task to resolve any conflict in testimony and you decide beyond a reasonable doubt whether the signer, that is, the defendant, of these returns for the years in question which included an understatement of gross receipts and an understatement of the expenses, believed these returns were not true and correct, as to every material matter. In determining whether the defendant believed the returns to be true and correct,



## Charge of the Court

or believed them to be false, you should look at all the circumstances surrounding the transactions involved. You must ask yourself: Whether the transactions were carried on in the usual way of doing business. If not, why not? Were the transactions straightforward and open or were they devious? Nobody can intentionally avoid knowledge by closing his eyes to the facts which would appear obvious to a reasonable man. If you find the defendant had discussed this matter with a competent tax accountant and that the tax returns herein were prepared pursuant to that advice after the defendant had given the accountant all the facts and all the information necessary to prepare the income tax returns, then you must find that the defendant did not wilfully file false returns and false statements and you should agree in a verdict of not guilty.

On the other hand, if you find that the defendant did not furnish his accountant with all the information and facts necessary to prepare a proper tax return for the years in question, then you may find that his tax returns were not prepared pursuant to the advice of a competent tax accountant. You should also consider any other evidence or any other circumstance which you deem relevant to determining whether the defendant

## Charge of the Court

believed the returns to be true and correct, or whether he knew full well and believed that they were false in any material manner.

The fourth element, the final element under this particular section of the statute is that the defendant must have acted wilfully. I think I touched on that already. In the case charged here, an act is wilful if it is done voluntarily with a specific intent to sign a return as true and correct when the signer knows and believes that the return is not true and correct in every material matter and he does this for the purpose of concealing from the Government the true income or other material facts that an accurate and complete and truthful return would show. The law requires that a person must act wilfully so that no one will be convicted for an innocent mistake, or stupidity or carelessness or any other innocent reason or that he may not be convicted for slipshod bookkeeping. It's thus not sufficient for the Government merely to prove that the return was signed or prepared in haste or recklessly or that the underlying records were kept in a careless or unwise manner, there must be something more.

And you consider all the evidence and you decide



## Charge of the Court

whether the Government has proved beyond a reasonable doubt that this defendant acted with knowledge and wilfully and knowingly, not by inadvertance or stupidity or innocent reasons, the Government has the burden to prove that.

To sum up, before you convict this defendant on the particular counts 4, 5, and 6, you must find beyond a reasonable doubt one, that the defendant signed the returns in question; two, that the return contains or was verified by a written declaration that it was made under penalty or perjury; three, that the defendant believed this return was not true and correct as to every material matter; and four, that he knowingly and wilfully signed or made the return, mailed the return. It's the burden of the Government to prove all of these elements beyond a reasonable doubt.

Now, of course, the mere fact that a defendant signs his tax returns is not sufficient of itself to prove beyond a reasonable doubt that he had sufficient knowledge of the contents of his returns with respect to any count of the indictment to justify a finding of a wilful attempt to evade, or defeat a tax, or finding that the defendant believed the returns were not true and correct as to every material matter.

## Charge of the Court

As to every material matter, it must be established, among other things, beyond a reasonable doubt. And, of course, there is other evidence in this case that you must consider. In addition to the fact that he did sign his tax return, you must find that he wilfully and knowingly signed the tax returns and he did not believe them to be true and correct as to every material matter.

Now, the case has been a relatively short one, ladies and gentlemen, and I am not going to marshal the evidence -- it's going to be your recollection of the testimony and of the documents that have been introduced into evidence that will count in this case. Not mine. You must understand that the Court does not express, has not expressed it directly, indirectly, subtly, otherwise or information or gestured anything concerning any of the facts involved in this case. If the attorneys or either of them have misstated the testimony or have misreferred to any of the documents, you must disregard those misstatements or mistakes.

Again, I advise you that it's your recollection of the testimony, your recollection of the exhibits, you will have them before you whenever you wish them, they will control your deliberations, not the attorneys'



arguments.

The Government's contentions have been set forth clearly in the indictment. The defendant, however, denies absolutely the contentions set forth in the indictment as I have read that indictment to you, he pleads not guilty. He denies that he wilfully attempted to defeat, or evade the tax due, or that he believed the returns were incorrect as to any material matter.

I repeat, you must consider all six counts separately and the evidence against the defendant separately with regard to each count.

Now, the Government's case against this defendant rests on both direct, and as I see it, circumstantial evidence. As to the subject of circumstantial evidence I would like to make a few comments.

Circumstantial evidence is evidence of a fact, from which you may reasonably infer the existence, or the nonexistence of another fact.

For example, suppose you are in a room with no windows and a person comes into your room wearing a raincoat which is wet, carrying an umbrella which is wet, now that would be circumstantial proof that it is raining outside even though you did not otherwise know

## Charge of the Court

it was raining; that is simple.

I will give you another illustration: Suppose a member of the jury were to ask the Court Reporter for a pad and pencil to make notes just before he took a little recess; and suppose that after the recess you came back and the Deputy Court Clerk, this gentleman here, and not the Court Reporter to whom the member of the jury first spoke was to hand the juror a pad and paper and a pencil; that would be circumstantial evidence that the Court Reporter had given the juror message to the Deputy Court Room Clerk. I think that is quite obvious. Although no one saw him or heard him, he gave the message. So, as the words indicate, circumstantial evidence means evidence concerning circumstances surrounding the incident and details as distinguished from the person's observation. It's more than and fundamentally different from mere conjecture or surmise for under our law no man is to be convicted on the basis of guesswork or speculation.

An inference that is reasonably drawn from the facts testified to is evidence. In listening to the evidence, you may draw reasonable inferences based upon your own common sense and your own experiences from any facts that you



## Charge of the Court

find have been proven in this case.

While an inference may be reasonably drawn from a proven fact, it may not be drawn from another inference. When two inferences may be drawn from a proven fact, one consistent with guilt and the other consistent with innocence, you must draw the inference of innocence.

Now, a logical inference is to be distinguished from sheer speculation or suspicion, sometimes it's difficult to make it clear to a jury that circumstantial evidence is legal and acceptable evidence. It is. In other words, you don't have to have personal direct evidence, circumstantial evidence is legal and acceptable evidence, it's that evidence that tends to prove a disputed fact by other facts which have a logical tendency to lead the mind to a conclusion that the facts ought to be established actually exist.

Circumstantial evidence may consist of an accumulation of many details which are so logically interrelated and so consistent with each other and so inherently probable that you may not have the slightest doubt as to its truthfulness and accuracy. As a general rule, the law makes no distinction between direct and circumstantial evidence.

## Charge of the Court

Circumstantial evidence may not be enough to convict but circumstantial evidence must be so convincing that it leaves no reasonable doubt. If you have a reasonable doubt, after you consider all the circumstantial and other evidence as to this defendant, then of course you must acquit.

The defendant pleaded not guilty. He took the stand. A defendant who wishes to testify is a competent witness and his testimony should not be disbelieved merely because he is a defendant. However, in weighing his testimony, you may consider the fact that the defendant has a vital interest in the outcome of the trial, or you may consider that fact and you may also consider and take into account the probabilities or improbabilities of the stories of a defendant.

Now, there is introduced into evidence several large summaries illustrated as you will recall on charts, and several small summaries which were represented and testified to as being the summaries of a large number of checks and certain books and records reconstructed by the defendant. The originals or duplicates from which these charts or summaries were made were introduced into evidence. The charts, the summaries and



## Charge of the Court

calculations made therefore may be considered by you and if you desire to check the results and calculations, the underlying documents have been introduced into evidence and will be available to you for consideration. In that connection, several IRS Agents and Mr. Lomangino from the Chemical Bank testified as to the accuracy of the summaries and the charts introduced with their testimony.

Alvin Mindes, a Certified Public Accountant, and Alix Aragundi, took the stand on behalf of the defendant. They testified to the checks and reconstructed books and worksheets and general ledgers and payroll cards. You will remember that testimony as well as I.

Now, insofar as any of the testimony of any or all of the above witnesses rested upon opinions and conclusions as expert witnesses rather than upon facts; you should consider their background, their education, and you give those opinions such weight as you believe they deserve.

If you think the opinion, any of it, was a matter of opinion and you think the opinion of any of the experts is not based on sufficient experience or not supported by the evidence, then you may reject that opinion or conclusion.

## Charge of the Court

1  
2 However, insofar as the testimony of these  
3 witnesses rested more upon mere calculation predicated  
4 upon the supporting evidence, you're free to check  
5 those calculations if you doubt their testimony.

6 Now, when on trial in a criminal case, one is  
7 entitled to introduce evidence concerning his character  
8 and his reputation for honesty and truthfulness. In  
9 this case, the defendant in the course of cross-examin-  
10 ation adduced the testimony of Mr. Dorfman from the  
11 Hebrew Home for the Aged concerning the defendant's  
12 reputation for honesty and truthfulness in dealing with  
13 the Hebrew Home. You will remember his testimony and  
14 what he said as to the defendant's reputation for  
15 honesty and truthfulness.

16 He also introduced the testimony of Ely Balter  
17 of the Hebrew Home for the Aged concerning the defen-  
18 dant's reputation for honesty and truthfulness in the  
19 community. Their opinion-evidence and testimony on  
20 this point were admissible. Evidence and testimony  
21 of honesty, truthfulness and character of the defendant  
22 are not proof of innocence, but that testimony alone  
23 may under certain circumstances raise a reasonable  
24 doubt as to the defendant's guilt. It is for you to  
25 determine what weight you will give to this testimony,



## Charge of the Court

whether it raises reasonable doubts in your mind as to the defendant's guilt.

We'll have a few comments, ladies and gentlemen, on the credibility of witnesses, and I think it will end the charge.

In considering the evidence, you will exercise the exclusive function of passing upon the credibility of the witness. Now, you can see this is a very very important function, because to determine where the truth lies, you must out of necessity determine who is telling the truth; how you're going to do this is left to your own determination.

Among other things, in determining credibility of a witness, the jury may consider his motives in testifying, his manner and demeanor on the witness stand and his interest or prejudice or bias, if any, and whether he had a purpose or interest to serve which might color his testimony.

Interest does not necessarily mean that a witness is untruthful. It's merely an element that you may consider in reaching your determination upon the question of whether he is telling the truth. You consider the witness' demeanor, and to use the colloquial expression, you size him up when he tells

## Charge of the Court

you anything, and you decide whether he strikes you as a fair or candid witness or whether he strikes you as a person that is not telling the truth, either intentionally or unintentionally. You may consider the witness' intelligence, his state of mind, his ability to observe the matters to which she testified -- when I say she, I mean he just as well -- or whether he or she impresses you as having a fairly quick recollection of these matters. You should also consider the inherent probability or improbability of a witness' testimony and, of course, you should consider the inconsistencies or discrepancies of the testimony of a witness or between the testimony of different witnesses; such inconsistencies or discrepancies may or may not cause you to discredit a particular witness' testimony.

Now, in weighing the effect of an inconsistency or a discrepancy, always consider whether it pertains to a matter of importance or whether it's an unimportant detail and also whether the inconsistency or discrepancy results from an innocent error or practice or intentional falsehood.

Another consideration is whether or not the witness has been contradicted by other credible evidence



## Charge of the Court

and whether or not he or she has made statements at other times, or place, under oath or otherwise which contradicted, or were contrary to, those made on the witness stand.

As to the latter, you should consider whether any prior inconsistency or contradictory statements conflict with the testimony given by the witness in respect to a material or immaterial matter and to what extent, if any, such inconsistency should be considered to affect the witness' credibility.

In considering any prior inconsistency or contradictory statements made by witnesses or the conflict of any testimony the witness had given on the stand with some testimony given at some other time, it is important to determine whether those inconsistencies or conflicts again referred to a material or essential portion of his testimony, or immaterial, or unimportant details of his story and to what extent, if any, they affect the credibility of the witness as to the essential facts in this case. You decide what is important and what is unimportant, regardless of any statements made by counsel.

Now, the jury is not bound to believe inherently and improbable or unreasonable statements made by any

## Charge of the Court

witness just because that witness ~~happens to be~~ happens to make those statements under oath. The jury has a right in appraising a particular witness' credibility as to all or part of his or her testimony, to consider the probability or the improbability of that testimony when viewed in the light of all the circumstances and the other evidence in the case.

Now, if you find any witness has knowingly testified falsely as to material facts, you may disregard the entire testimony of that witness, or you may accept that which you believe to be true and disregard the balance.

If you disregard his testimony altogether and the guilt of the defendant is dependent upon such testimony, then of course, you must acquit the defendant.

Now, it's for you to determine whether a defendant, whether a witness, whoever it might be, is telling the truth as to all the facts or telling the truth with respect to some of the facts, or he is telling the truth at all. The test as to whether you believe a witness, is the same test, ladies and gentlemen, which you apply in your everyday business, in your home affairs, when you're called upon to make



## Charge of the Court

a similar determination almost every day.

Do not think, members of the jury, when you came into this jury box and were sworn as jurors, that it's supposed that you are going to lay aside your business or everyday experience lay aside your common sense; that is not so. You are now being called upon, indeed, to use that business sense, to use that everyday sense and use your common sense to assist you in determining any conflict in evidence in this case.

You are exclusive judges in determining where the truth lies. And now, it's obvious from the testimony in this case that someone is not telling the whole truth, either intentionally or unintentionally. It's for you to determine who is telling the truth.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the defendant accused. That your verdict be without any prejudice or without any bias or without any sympathy. You are to perform this duty without any fear or any bias and without any prejudice as to any party. The law does not allow you to be governed by fear or sympathy or by prejudice or by public opinion.

## Charge of the Court

In arriving at your decision you should consider the evidence as I said before in the light of your experience, and by the exercise of your own knowledge and common sense. You must not permit sympathy to enter the verdict. The accused and the public expect that you will carefully, and impartially, consider all the evidence, follow the law as the Court has stated the law to be, and you will reach a just verdict, regardless of the consequences.

Now, while you must not surrender your conscientious opinion, you must not be stubborn, just for the sake of being stubborn. You must keep your minds open to reason. So in conclusion let me say that it's your duty to weigh the evidence carefully, dispassionately and calmly and with reason and to reach a conclusion about the case as to the facts which will be wholly within your finding.

Now, the only question for your consideration is whether this defendant, Romulo Vellanti, is guilty or innocent of the offenses for which he is now on trial. If you are satisfied beyond a reasonable doubt he is guilty, it will be your plain duty to convict him. If you have an opposite view of the matter, it will be your duty to acquit him. If you have a reasonable



## Charge of the Court

doubt about the matter, it is equally your duty to acquit him.

The punishment provided by law is exclusively within the province of the Court. It's for the Court to determine any mitigating or special circumstances which may require consideration in the case if the defendant is found guilty, so you should not be concerned with the question of punishment.

Ladies and gentlemen, all 12 of you must agree whichever way you find, in other words, your verdict must be unanimous. You must take up each count of the indictment separately and you must determine the guilt or innocence of this defendant with respect to each count. The form of your verdict should be: We the jury, find the defendant Romulo Vellanti, not guilty on Count One or in the alternative, we the jury, find the defendant Romulo Vellanti, guilty on Count One and you must repeat this procedure on each count and you return a verdict of guilty or not guilty on each count, with respect to this defendant.

If you wish the testimony of any witness to be read to you or if you have any further questions, please send a note to the Marshal, who will relay your requests to me. This is true also with respect

## Charge of the Court

to any of the exhibits that have been introduced into evidence. I know jury service is not always pleasant, it's not very convenient, but jury service is one of the keystones of our system of American justice and democratic government. It also is one of the outstanding features that distinguishes our form of government from the forms of government of perhaps 95 percent of the rest of the world. So I want to thank each and every one of you for your outstanding devotion, for your work as jurors.

May you, acting in accordance with the evidence and law, by your verdict decide the truth and proclaim the cause of righteous and justice in this case. If you desire as I said before, to have any of the exhibits, they will be delivered to you. And, if after you have retired, you desire to be informed on a point of law arising in the case, or have any part of the testimony clarified, you should ask to be returned to the court for further instructions.

Now, at this point, it's necessary for me to take a five-minute recess in order that I may hear applications to be made by counsel. In that interim, you must not consider the case and you cannot; you should not consider this case until you are brought



## Charge of the Court

back at the end of the short recess. It will only take five-minutes and you will be brought back and then you can begin deliberating the case. So we'll take that short recess.

Thank you very much.

(Whereupon, the jury left the courtroom and the proceedings were held outside the hearing of the jury.)

(Whereupon the trial continued in open court.)

THE COURT: Very well, ladies and gentlemen, I think you may begin deliberation. There are no changes in the instructions.

Please swear them in.

(Whereupon, the Marshals were sworn by the Clerk of the Court.)

THE COURT: Very well, thank you very much, ladies and gentlemen. I will be here for any questions you may want to ask.

(Whereupon, the jury was escorted out of the courtroom and into the jury room.)

\* \* \*

CERTIFICATE OF SERVICE

February 14, 1977

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Ryan SK [Signature]